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Of Attorneys for Defendant Keefe Commissary Network LLC

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

BRADLEY W. MONICAL,

Plaintiff,

v.

MARION COUNTY, Sheriff Jason Myers,
Marion County Jail Commander Tad
Larson, Keefe Commissary Network LLC,
Deputy Straus, Deputy Dunnbarr, Deputy
Frieze, Deputy McGowan, Deputy Knospe,
and Cindy Gage,

Defendants.

Case No. 6:18-cv-00103-YY

**DEFENDANT KEEFE COMMISSARY
NETWORK LLC'S RESPONSE TO
PLAINTIFF'S MOTION FOR
SCHEDULING ORDER AND
MOTION TO QUASH DISCOVERY**

LR 7-1 CERTIFICATION

The plaintiff opposing party is a prisoner and is not represented by counsel.

**RESPONSE TO PLAINTIFF'S MOTION FOR SCHEDULING ORDER
AND MOTION TO QUASH DISCOVERY**

Comes now Defendant Keefe Commissary Network LLC ("KCN"), by and through counsel, and for its Response to Plaintiff's Motion to Set Scheduling Order for Discovery and Dispositive Motions [Doc. 124] and its Motion to Quash Discovery, states as follows:

PROCEDURAL HISTORY AND BACKGROUND

Plaintiff is an individual lawfully incarcerated at the Oregon State Penitentiary. Plaintiff alleges that KCN violated his First Amendment Rights by charging postage rates in excess of government rates. [Doc. 58, p. 5.] Plaintiff named KCN as a Defendant in his third amended complaint, filed in March 2020. [Doc. 58.] KCN moved to quash service and dismiss the claims against it in May 2020. [Doc. 89.] The Court entered its final Opinion and Order on that motion on January 22, 2021.

Meanwhile, discovery closed January 19, 2021, and dispositive motions were originally set to be filed by February 25, 2021. [Doc. 100]. KCN moved for an extension of time to file a Motion for Summary Judgment on February 24, 2021 [Doc. 119], which the Court granted, extending the dispositive motions deadline to March 26, 2021 [Doc. 121]. On March 8, 2021, Plaintiff filed the instant motion to set a scheduling order for discovery relating to KCN. [Doc. 124]. Two days later, and three months after discovery closed, Plaintiff served his first set of discovery requests upon KCN. Smith Decl., Ex A.

KCN will file a Motion for Summary Judgment asserting Plaintiff failed to exhaust his administrative remedies regarding his claims against KCN on or before March 26, 2021.

ARGUMENT

- 1) *A Scheduling Order relating to KCN is inappropriate at this time, as Plaintiff waited long after discovery closed to request it and KCN intends to file a Motion for Summary Judgment upon which success is likely.*

Plaintiff's request for a scheduling order to conduct discovery into KCN is untimely and inappropriate. Per Plaintiff's own motion, KCN has been involved in this matter for nearly a calendar year. [Doc. 124, p. 2.] Plaintiff made no effort to serve discovery in this time. Plaintiff agrees that discovery closed on January 19, 2021. *Id.* Plaintiff, however, has

given no justification as to why he has not explored his claims against KCN in the nearly a year that KCN has been involved in the suit or even in the time after the Court entered its final Opinion and Order on KCN's motion to dismiss. Plaintiff has no excuse, and his time to conduct discovery has long since passed.

Further, based on review of Plaintiff's grievances pursued in the Marion County Jail, KCN will be filing a Motion for Summary Judgment relating to Plaintiff's failure to exhaust administrative remedies in the near future. KCN expects that it will be successful in receiving judgment as a matter of law on the claims against it, and reopening discovery would be inappropriate at this time. In the event that KCN is not successful on this motion, KCN would consent to the entry of a scheduling order relating solely to the merits of Plaintiff's claims against KCN.

2) Plaintiff's discovery requests issued after the close of discovery should be quashed.

Plaintiff inappropriately served discovery months after the discovery deadline closed and even after he filed his own motion to reopen discovery. These requests should be quashed. Plaintiff has no right to serve discovery in clear defiance of this Court's discovery orders. Even if Plaintiff's request for a Scheduling Order is granted, the currently filed discovery is untimely. This Court should strike Plaintiff's discovery requests as served and decline to issue a scheduling order until after it has addressed KCN's forthcoming Motion for Summary Judgment.

Wherefore, Defendant Keefe Commissary Network LLC respectfully requests that this Court deny Plaintiff's request for a Scheduling Order, at least until after this Court addresses KCN's forthcoming Motion for Summary Judgment; that Plaintiff's untimely

discovery be quashed; and for such other and further relief as this Court deems meet and just in the circumstances.

Respectfully submitted this 22nd day of March, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing **DEFENDANT KEEFE COMMISSARY NETWORK LLC'S RESPONSE TO PLAINTIFF'S MOTION FOR SCHEDULING ORDER AND MOTION TO QUASH DISCOVERY** on the following attorneys on the date noted below via the following method:

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Method: ☒ US Mail, postage prepaid – To Plaintiff Bradley W. Monical
☐ Email – Courtesy Copy
☐ Facsimile
☐ Hand Delivery
☒ CM/ECF Electronic Service – To Attorneys for Marion County Defendants

Dated this 22nd day of March, 2021.

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